

RECORDATION NO. 18816-A
FILED 1425
NOV 28 1994 - 9 30 AM
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INTERSTATE COMMERCE COMMISSION

ALVORD AND ALVORD
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OF COUNSEL
URBAN A. LESTER

November 23, 1994

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are three (3) executed copies of a Confirmation, Modification and Additional Collateral Agreement, dated as of November 28, 1994 a secondary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

The enclosed document relates to the Loan, Chattel Mortgage and Security Agreement duly filed with the Commission under Recordation Number 18816.

The names and addresses of the parties to the enclosed document are:

Debtor: ACF Industries, Incorporated
3301 Rider Trail South
Earth City, Missouri 63045

Secured Party: European American Bank
335 Madison Avenue
New York, New York 10017

A description of the railroad equipment covered by the enclosed document is:

One Hundred and five (105) railcars bearing ACFX reporting marks and numbers 69356 through 69455, inclusive, 69562 through 69565, inclusive, and 95261.

RECEIVED
OFFICE OF THE
SECRETARY
NOV 28 9 27 AM '94
LICENSING BRANCH



Mr. Vernon A. Williams
November 23, 1994
Page 2

Also enclosed is a check in the amount of \$21.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return two stamped copies of the enclosed documents to the undersigned.

Very truly yours,

Robert W. Alvord

RWA/bg
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Alvord and Alvord
918 Sixteenth Street, N.W., Suite, 200
Washington, D.C. 20006-2973

November 28, 1994

Dear ~~MR.~~^{MMM} Alvord

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/28/94 at 9:30 A.M., and assigned recordation number(s). 18816-A

Sincerely yours,

Vernon A. Williams
Vernon A. Williams
Secretary

Enclosure(s)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature

Jackie Cambridge

RECORDATION NO. 18816-A FILED 1425

NOV 28 1994 - 9 50 AM

INTRA/STATE COMMERCE COMMISSION

CONFIRMATION, MODIFICATION AND ADDITIONAL COLLATERAL
AGREEMENT

As of November 28, 1994

ACF Industries, Incorporated
3301 Rider Trail South
Earth City, MO 63045-1393

Dear Sirs:

Reference is made to the Loan, Chattel Mortgage and Security Agreement, dated as of May 24, 1994 (the "Loan Agreement"), between ACF Industries, Incorporated, a New Jersey corporation (the "Borrower"), and European American Bank, a New York banking corporation (the "Bank"). Capitalized terms used and not otherwise defined herein have the respective meanings as set forth in the Loan Agreement.

The Loan Agreement, together with all other agreements, instruments, financing statements and other documents executed or delivered in connection therewith, as the same may be amended or modified herein and from time to time in the manner set forth therein, are hereinafter collectively referred to as the "Loan Documents."

The Borrower has requested that, subject to the terms and conditions set forth below, the Bank increase the Commitment from \$5,000,000 to \$10,000,000 and to expand the definition of "Equipment" in the Loan Agreement to include the railroad rolling stock set forth on Annex "I" attached hereto.

Accordingly, the Bank and the Borrower hereby confirm and agree as follows:

1. Borrower acknowledges and agrees that: (a) the Bank has advanced loans to the Borrower as evidenced by the Note and, as of the date hereof, the unpaid principal balance of the Note is \$5,000,000; and (b) the obligation of the Borrower to repay principal on and interest under such loans is absolute and unconditional and is not subject to any counterclaim, set-off, right of recoupment, abatement or other claim or determination, or, as of the date hereof, any defense and such loans are and shall continue to be governed by and secured by the terms and provisions of this letter agreement and the Loan Agreement and the other Loan Documents, a the same are modified by this letter agreement.

2. The Loan Agreement is hereby amended as follows:

c:jdg0159ag

(a) The definition of "Equipment" contained in Section 1 of the Loan Agreement is hereby amended to include all of the railroad rolling stock described on Annex I annexed hereto which is intended for use in interstate commerce, together with all parts, attachments, accessions, accessories, equipment, appurtenances and additions that are at any time appertaining, attached, affixed or related thereto, and all substitutions, renewals or replacements thereof and additions, improvements, accessions and accumulations thereto, wherever located, and together with any standard gauge rolling stock (other than locomotives or passenger or work equipment) subject to the lien of the Loan Agreement.

(b) The definition of "Commitment" contained in Section 1 of the Loan Agreement is hereby amended and restated in its entirety to read as follows:

"Commitment" shall mean \$10,000,000, as such amount shall be reduced from time to time in accordance with the terms hereof."

3. The Borrower hereby irrevocably and unconditionally: (a) restates and reaffirms the liens of the Loan Agreement; (b) restates, reaffirms and continues its grant to the Bank of a valid, perfected, first priority security interest in the "Collateral" (as amended to include the amended definition of the term "Equipment" in accordance with the terms of this letter agreement) as collateral security for the full and prompt payment and performance of the Obligations; and (c) confirms that its obligations under the Loan Agreement are irrevocable and unconditional and are not subject to any counterclaim, set-off, right of recoupment, abatement or other claim or determination or, as of the date hereof, any defense and, no Default or Event of Default has occurred and is continuing.

4. The Borrower shall promptly and duly execute and deliver to the Bank the Amended and Restated Note in the form of Annex "II" attached hereto and such other agreements, instruments and documents, in such form and substance as the Bank shall request in order to effectuate the transactions contemplated by this letter agreement and the Loan Documents, as modified hereby.

5. (a) The closing of the effectiveness of the amendments provided for in paragraph 2 of this letter agreement (the "Closing") shall take place at the offices of Parker Chapin Flattau & Klimpl, LLP, special counsel to the Bank, at 1211 Avenue of the Americas, New York, New York 10036, commencing at 10:00 a.m., New York City time, on November 28, 1994 (the "Modification Effective Date"). Upon the occurrence of the Closing, the amendments provided for in paragraph 2 of this letter agreement shall be and become effective. If at the Closing any of the conditions set forth in paragraph 5(b) shall not have been fulfilled to your satisfaction, the amendments to the Loan Agreement provided for in paragraph 2 hereof shall be of no effect and the Loan Agreement shall remain unchanged and in full force and effect.

(b) The effectiveness of the amendment provided for in this letter agreement is subject to the fulfillment to your satisfaction, prior to or at the Closing, of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Borrower contained in the Loan Agreement or otherwise made in writing by or on behalf of the Borrower in connection with the transactions contemplated hereby shall have been correct when made and shall be correct (as amended by the terms of this agreement) on the Modification Effective Date, except as affected by the consummation of such transactions; and

(ii) Performance; No Default. The Borrower shall have performed all agreements and complied with all conditions contained herein required to be performed or complied with by it prior to or on the Modification Effective Date including (without limitation) all conditions contained in Sections 3(a) and 3(b) of the Loan Agreement) and on the Modification Effective Date (and after giving effect to the amendment(s) of the Loan Agreement contemplated hereby), no condition or event shall exist which constitutes a Default or Event of Default.

6. Any other term or provision of any of the Loan Documents that is inconsistent with any of the terms and provisions of this letter agreement is hereby deemed amended to be consistent herewith.

7. This letter agreement shall be deemed to supplement and be a part of the Loan Agreement.

8. The Bank and the Borrower each hereby agrees and consents to the terms and provisions of this letter agreement and the transactions contemplated hereby, including (without limitation) the modifications to the Loan Documents contained herein.

9. The Borrower is liable for all out-of-pocket expenses incurred by the Bank in preparing and negotiating this letter agreement and in carrying out the transactions contemplated hereby, including (without limitation) all reasonable attorneys' fees and expenses, and all recording and filing fees.

10. This letter agreement shall be governed by the construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law or choice of law.

11. No provisions of this letter agreement or any of the Loan Documents may be waived, amended or modified except by a writing signed by the affected party.

12. The amendments provided for in this letter agreement are limited as specified and shall not constitute a modification, acceptance or waiver of any other provision of the Loan Agreement, and upon the Modification Effective Date,

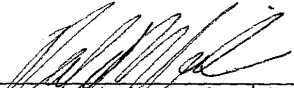
the Loan Agreement (as hereby amended) shall remain the legal, valid and binding obligation of the Borrower.

Except as expressly modified herein, the terms and provisions of each of the Loan Documents shall remain unchanged and in full force and effect.

This letter agreement may be signed in one or more counterparts, all of which together shall constitute a single agreement binding upon the parties hereto.

Very truly yours,


EUROPEAN AMERICAN BANK

By: 
Name: Robert Maichin
Title: Ass. stant Vice President

335 Madison Avenue
New York, New York 10012

Agreed and Accepted:

ACF INDUSTRIES, INCORPORATED

By: 
Name: Robert S. Mitchell
Title: Treasurer

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

On this 23rd day of November, 1994, before me personally came Robert J. Mitchell, to me known, who being to me duly sworn, did depose and say that he resides at Woodbury, New York, that he is the Treasurer of ACF INDUSTRIES, INCORPORATED, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation on the date recited above.

DAVID M BRENSILBER
Notary Public, State of New York
Qualified in New York County
No. 4980938
Commission Expires April 29, 1995

David M. Brensilber

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

On this 23rd day of November, 1994, before me personally came Robert G. Maichin, to me known, who being to me duly sworn, did depose and say that he resides at 205 West Hudson Street, Long Beach, New York 11561, that he is the Assistant Vice President of EUROPEAN AMERICAN BANK, the bank described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said bank on the date recited above.

Emilia P. Bingay

EMILIA P. BINGAY
Notary Public, State of New York
No. 60-4749786
Qualified in Westchester County
Commission Expires October 31, 1995

ANNEX I

The property covered by the Loan, Chattel Mortgage and Security Agreement dated as of May 24, 1994, is hereby amended to include all of the following, whether now owned or hereafter acquired, and wherever located: (a) all of the railroad rolling stock and standard gauge rolling stock listed on Schedule A hereto together with all accessories, accessions, equipment, parts, additions, attachments and appurtenances that are at any time appertaining, attached, affixed or related thereto, and all substitutions, renewals or replacements thereof and additions, improvements, accessions and accumulations thereto together with all rents, issues, income, profits and avails therefrom and the proceeds thereof; (b) all of the lease agreements, lease schedules or relevant portions thereof and all riders, amendments and supplements thereto entered into and to be entered into by the Debtor with the lessee(s) thereunder, which lease agreement, lease schedule or relevant portion thereof provides for the leasing of one or more units of any of the items listed in the preceding clause (a), to the extent but only to the extent relating to the items listed in the preceding clause (a), including (without limitation) (i) Rider 169 effective as of October 1, 1994, and Rider 171 effective as of September 1, 1994, to Master Service Contract No. 6211, between the Debtor and Allied Signal, Inc., and (ii) Rider 34 effective as of November 1, 1994, to Master Service Contract No. 5619, between the Debtor and ECC International, and all payments due and to become due under any such lease but only to the extent relating to any of the items listed in the preceding clause (a), whether as contractual obligations, damages or otherwise to the extent such payments are derived from any of the items listed in the preceding clause (a); and (c) all products and proceeds of any of the foregoing in whatever form, including (without limitation) any claims against third parties for loss or damage to or destruction of any or all of the foregoing and cash, negotiable instruments and other instruments for the payment of money, chattel paper, security agreements or other documents.

Schedule A

<u>AAR CODE</u>	<u>RPTG MARK</u>	<u>FROM</u>	<u>TO</u>	<u>TOTAL CARS</u>
C214	ACFX	69356	— 69455	<u>100</u>
C214				100
C214	ACFX	69562	— 69565	<u>4</u>
C214				4
T1054	ACFX	95261		<u>1</u>
T1054				<u>1</u>
TOTAL				<u>105</u>

AMENDED AND RESTATED
PROMISSORY NOTE

\$10,000,000.00

New York, New York
November 28, 1994

FOR VALUE RECEIVED, the undersigned, ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (the "Borrower"), promises to pay to the order of EUROPEAN AMERICAN BANK, a New York banking corporation (the "Bank"), the principal sum of Ten Million Dollars and 00/100 Dollars (\$10,000,000.00) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Bank under and pursuant to the Loan Agreement referred to below) in lawful money of the United States of America, on demand, but in any event no later than the Maturity Date as defined in the Loan Agreement (hereinafter defined), and to pay interest on the unpaid outstanding principal amount hereof until maturity in like money at such office or place at a rate equal to one-half of one percent (1/2%) per annum in excess of the "prime rate" announced by European American Bank from time to time as its prime rate (the "Prime Rate"), which interest rate shall change when and as the Prime Rate shall change (which rate the Borrower acknowledges may not necessarily be the lowest rate charged by the Bank to its customers), and upon the continuance of any Event of Default and after maturity (whether by acceleration, demand or otherwise) at a rate equal to three percent (3%) per annum in excess of the Prime Rate (the "Post Maturity Rate"). Interest on this Note shall be payable in arrears monthly on the first day of each month commencing December 1, 1994, at maturity, and thereafter upon demand, and shall be calculated on the basis of a 360-day year and actual days. In no event shall the rate of interest on this Promissory Note exceed the maximum rate authorized by applicable law.

This Note is issued pursuant to a Loan, Chattel Mortgage and Security Agreement, dated as of May 24, 1994, as amended by the Modification Agreement (the "Loan Agreement"), between, inter alia, the Borrower and the Bank. Reference is made to the Loan Agreement for required and optional payments and prepayments and rights of the holder hereof to accelerate the unpaid balance hereof prior to maturity.

Under the Loan Agreement, the Bank made available to the Borrower revolving credit loans in the maximum amount of \$5,000,000 (the "Existing Commitment") of which loans in the aggregate principal amount of \$5,000,000 are currently

outstanding (collectively, the "Existing Loans"), which loans are evidenced by the Promissory Note dated May 24, 1994 (the "Existing Note"), issued by the Borrower to the order of the Bank. The Borrower has requested that the Loan Agreement and the Existing Note be modified, and that the "Commitment" (as defined in the Loan Agreement) be increased from \$5,000,000 to \$10,000,000, and the Bank has agreed to do so, subject to certain conditions.

The Borrower has issued this Note to the Bank and the Bank and the Borrower have entered into the Confirmation, Modification and Additional Collateral Agreement, dated as of November 23, 1994 (the "Modification Agreement") between the Borrower and the Bank in order to: (a) continue and restructure the Borrower's existing loan facilities, (b) confirm and continue certain of the indebtedness created under the Existing Note upon the terms and provisions of this Note, (c) continue, modify (in various respects), add to and restate the representations, warranties, covenants and other obligations made in or created under the Existing Note, and (d) amend, restate and completely replace the Existing Note, all upon the terms and provisions and subject to the conditions set forth herein.

Although issued in substitution for and restatement and replacement of, the Existing Note, this Note shall not be deemed to have been issued in payment, satisfaction, cancellation, termination or novation of the Existing Loans, the Existing Commitment or the Existing Note, and this Note shall evidence a continuous commitment of the Bank to lend to the Borrower pursuant to the terms of the Loan Agreement, as amended by this Note and the Modification Agreement.

This Note is secured by the Loan Agreement and the assignments and other agreements, instruments and documents referred to in the Loan Agreement, all as more particularly described and provided therein, and is entitled to the benefits thereof.

The Borrower hereby waives diligence, demand, presentment, protest and notice of any kind, and assents to extensions of the time of payment, release, surrender or substitution of security, or forbearance or other indulgence, without notice.

The Bank has been authorized by the Borrower to record on the schedule annexed to this Note (or on a supplemental schedule thereto) the amount of each Loan (as defined in the Loan Agreement) made by the Bank under the Loan Agreement and the amount of each payment or prepayment of principal of each such Loan received by the Bank, it being understood however that

failure to make any such notation shall not affect the rights of the Bank or the obligations of the Borrower hereunder or under the Loan Agreement in respect of such Loans.

Payments of both principal and interest on this Note are to be made to the Bank at its office at 335 Madison Avenue, New York, NY 10017, or such other place as the Bank may from time to time designate, in lawful money of the United States of America in immediately available funds.

This Note may not be changed, modified or terminated orally, but only by an agreement in writing signed by the party to be charged.

This Note shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed in such State, and shall be binding upon the successors and assigns of the Borrower and inure to the benefit of the Bank and its successors and assigns.

IN WITNESS WHEREOF, the Borrower has executed and delivered this Note on the date first above written.

ACF INDUSTRIES, INCORPORATED

By: _____
Name:
Title: